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ROSE
1904-1908

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1904 – 1908

JAMES E. ROSE

AUBURN, IND.

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25% COTTON

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No.

7242

DeKalb Cir. Court,

Iver Janneson vs. Sabina Janneson

Rose Rose & Sharpless Attorney for Plff.

H W Morrill Attorney for Deft.

Nature of the Action.

Complaint to set aside deed

DATES

HISTORY OF THE CASE

Aug 7/04 Complaint filed
 Summons issued returnable Aug 29/04

NOTES OF AUTHORITIES.

Contract made by one who is drunk
 may be avoided: 3 Blkf 51; 10 Ind. 109;
 37 Ind 207; 4 App. 319.

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No. 7388

DeKalb Co

Court, May Term 1905

Chas E. Pontius

vs. B.D. & Chas Gill

Marshall et al

Attorney for Pltff.

J.E. & J.N. Rore

Attorney for Deft.

Nature of the Action.

Action for Damages \$30,900.00 joining
R.R. Co and Engineer as defendants.

DATES

HISTORY OF THE CASE

April 4/05 - Comptt filed; Returnable May 15/05

NOTES OF AUTHORITIES.

If controversy is inseparable cause cannot be removed. 6 O.R. & Co vs Dixon 179 U.S. 131

Master cannot be joined if controversy is separable nor if servant performs act in absence of master and without master's order. 2d, page 474

Form of Petition 2d. See also 132 U.S. page 474. The pleadings at time of filing petition determine whether cause is removable. 132 U.S. p. 476

If servant's acts complained of were in violation of his principal's order cause can be removed. 124 Fed. Rep. 983; 72 Fed. Rep. 637; 131 Fed. Rep. 985; 134 Fed. Rep. 313

biscuit Court, DeKalb Co
 Sherman Hollister vs. B. D. R. R. Co.
 F. L. Welsheimer Attorney for Pltff.
 J. C. & J. H. Rose Attorney for Deft.

Nature of the Action.

For Private Crossing of R. R. Track

DATES

HISTORY OF THE CASE

June 1847. Road established without width R.R. 277
 Oct 11/01 Complaint filed
 Oct 25/01 Demurrer to Compl. filed & overruled
 Nov 15/02 Ans. in 4 Par. filed
 Nov 13/02 Demurrer to 2, 3 & 4 Par. of Ans. filed

NOTES OF AUTHORITIES.

June 30/71 Land conveyed to E. & C. River V. 740
 Sept 20/79 " " B. D. 17 20

Plaintiff sought to make crossing under
 the provisions of Section 5320. B. & O. Statute
 The order establishing the road gives it no width
 and hence it is a road by user. 5 Blk. 462; 9-103; 24-2;
 102-578; 134-642.

The width of a road by user is determined by the place
 where travelled at end of 20 years 5-546; 10-24; 15-22
 It is unconstitutional to take land of one
 for the private way of another. 48-455; 46-33;
 123-372; 24 N. E. 135.

A way by necessity cannot be claimed where both tracts
 have not been owned by the same person 46-331-341
 Continued use of a strip to walk or drive over
 does not make it a highway 68 N. E. 49; 39 N. E. 1027

2nd Ohio S. 107; damages for R.R. crossing 110 Ind 5

R.R. entitled to damages for highway crossing 74 Ind 375
 R.R. not entitled to compensation for crossing bridge for crossing of R.R.
 Chicago & N. W. Illinois, 1881 74/106

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No. _____

Commissioners Court, DeKalb County

People

vs.

Ed. Fox

J E & J H Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

App. for Liquor License
Remonstrance

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Any voter of the Township may remonstrate
Sec. 72.78 Burns 1881Petitioner must reside in Township, sec 72.83 h
A licensee removing from the township forfeits his
license 71 N.E. 975.0
Violating liquor law is unpermitted 111-561
Remonstrator may sign by initials, 145-531.

Circuit Court, Noble Co.

Sabina Imeson vs. Ines Imeson

Monroe B. Leuk Attorney for Pltf.

Sharpless & Rose & Rose Attorney for Deft.

Nature of the Action.

Divorce

DATES

HISTORY OF THE CASE

Complaint filed
Venue to Noble County
Answer in 2 Pcs.

May 31/01 Petition for allowance
" " " Pltf. ordered to pay \$7⁰⁰ pr. week

NOTES OF AUTHORITIES.

Circuit Court, DeKalb Co
 Diantha Wyatt vs. B & O. R R Co
 Rhodes & Penfield Attorney for Pltff.
 Rose & Rose & Clark Attorney for Deft.

Nature of the Action

Suit for damages for being let off
 train, not at destination. Demand \$2000.

DATES

HISTORY OF THE CASE

Nov 29/05 Complaint filed
 Demurr to complaint, filed & overruled
 May 3/05 Examination of Pltff. filed
 June 1/05 Examination of Pltff. published
 Answer in G.D. filed
 June 12/05 Deposition of Mr & Mrs Hawks taken
 June 20/05 Deposition published - motion to suppress sustained
 " 21/05 Submission in ret. aside & Continued

NOTES OF AUTHORITIES.

Plaintiff complains that defendant sold her a
 ticket for Homer and put her off at Newton -
 The facts set out determine character of the
 pleading, and not epithets. 158 Ind. 624
 Passenger must consult company's regulations
 18 App 283; 104 Ind 13; 133 Ind 480 486 bottom.
 Passenger should not follow, or rely on statement
 of Ticket Agent. 133 Ind 480 486 bottom.
 A ticket is not a contract, but is a receipt. 12 Am
 & Eng R R page 141.
 The rules of the Company govern the conduct
 18 Am. & Eng R R 252 note at bottom of p. 253.
 Plaintiff was lawfully put off the train 3d Am
 Eng R R Cases 340
 Passenger cannot demand to be carried to
 station called for on ticket if train is not scheduled
 to stop there 9 Am. & Eng R R 307
 A. Passenger may sue for being misled by a ticket
 agent, but not in an action for being ejected 118-221
 R R Co not required to stop at point where train
 is not scheduled to stop 80 Pacific Rep. 958
 Statements of party out of court not admissible in
 his favor. Indirect & Coll Evidence p. 322 et seq.
 7th App. 12 Ind 451, 457; 13 App 31 32; 108 Ind 283
 Exclamation of pain 33 App 283.

LEGAL DEPARTMENT

STOPS AT NON-SCHEDULED POINTS

Supreme Court of Kansas, in Usher vs. Chicago,
 Island and Pacific Railway Company (80 Pacific
 956), holds that the issuance of a ticket to a station
 not imply that the ticket is to be used on the first
 leaving the point of sale. The ticket merely entitles
 purchaser to use the ticket on a train which, accord-
 the company's time card, stops at the place to
 the ticket is sold. The holder cannot require a
 stop at a station at non-scheduled points.

Court,

Laura Bell Cramer vs. David Cramer

J E & H Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

To set aside deed made by infant

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

An infant when of age may disaffirm deed
 Burns Stat 91. Sec 3366; Also sec 3366.
 A minor may disaffirm deed 74-115; 24-385; 41-586; 54-
 Deed must be disaffirmed before suit to recover 41-586.
 52-68; 119-187.
 What constitutes a disaffirmance 52-68; 64-100; 86-8
 Minor cannot disaffirm deed made to execute trust
 20 Ohio State 97; 16 Am & Eng legd p 274
 Infant cannot repudiate mortgage for purchase money
 and hold deed Am. Eng. by 9 Law 1366

Circuit Court, De Kalb Co
 Sarah Norregon vs. Nancy Muroh
 J N Beate Attorney for Pltff.
 L J W Ror Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Feb 27/04 Complaint filed
 " " " Summons served
 Mch 21/04 Demurrer filed
 " " " Answer filed 2 paragraphs
 May 27/04 Amended Complaint filed
 June 16/05 1st Par of Supp. Complaint filed
 " " " 2^d Par of Amended Complaint filed
 June 24/05 Ans of Gladys Platt filed
 " " " Ans of Inag filed

NOTES OF AUTHORITIES.

Widow's election to take land under
 the law must be filed within one
 year. Burns 174. See 2466
 If the widow conveys devised lands
 it is an acceptance 82-240, 257
 Election by widow procured by fraud
 may be revoked 135-168, 421;
 Fraud must be alleged in complaint 141-471, 47
 149-363, 345. If the will devises, devisees, property, and
 devisee elects to accept will he cannot claim
 property by former ownership 4 App 116;
 No one but the widow can elect 120-172; 1137-169;
 widow must elect as statute provides 120-172, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.
 Fraud must be alleged & proved 141-471;
 Widow must elect as statute provides 158-438
 12 App 70. If any beneficial interest is given
 the widow by the will she must elect to take
 under the law, or she takes under will 74 N.E. 386
 Court should put itself in place of testator in
 order to interpret a will 1191-2514; 20 N.E. 779, 152-263
 Widow must elect as law provides 36 N.E. 714
 137-169 - widower must elect 27 App 150 -
 If the plaintiff is to have 1/3 in fee, it must
 be taken from the 2/3 & 1/3 98-460

Circuit Court, DeKalb Co

Baker et al vs. Healey

J. W. Baxter

Attorney for Pltff.

J. E. of H. Rose

Attorney for Deft.

Nature of the Action.

Partition

DATES

HISTORY OF THE CASE

Apr 10/95 - Complaint filed

" 12 " Summons served

May 13/05 - Aff of non res filed

June 17/05 - Ans. of Charles Nelson filed

" 19/05 - Cross compt of Samuel B Healy filed

" " " Ans of Samuel filed

" " " Ans of Eli filed

" " " Ans of Mrs Wagner filed

June 19 - Ans to Samuel B Healy filed

June 26/05 - Trial of cause

NOTES OF AUTHORITIES.

Section 1203 Burns, provides wh
may have -

If a partial partition can be made
it should be done Burns - 1203; 45-313;

Circuit Court, DeKalb
 Mills vs. LeRoy
 Sharpless Attorney for Pltf.
 McKenam & Rose & Roy Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Replevin of household goods, mortgage
 When household goods are mortgaged
 Mortgagee, entitled to possession when Burns
 Lec 7498 - 153-219;

This statute is constitutional 153-219

Receipt for payments must be given see
 7498; Recd must contain statement 153-219

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No. _____

Circuit Court, DeKalb
 Lucy M. Carmahan vs. John Carmahan
 J. E. J. H. Rose Attorney for Pltff.
 P. V. Hoffman Attorney for Deft.

Nature of the Action.

Dissol

DATES

HISTORY OF THE CASE

1904
 July 7 Complaint filed
 " Notice of App. for allowance

NOTES OF AUTHORITIES.

Application for "quit money" shows that the
 plaintiff has 120 acres of land, but no money and
 is sick. Allowance may be made 141-305
 141-588; 149-466;

Reasonable expenses includes atty fees 79-224
 2nd wife assumes duties toward children
 of 1st marriage 26-330 331

Court,

Baker

vs.

Baker

J E J H Roe

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

1886
Oct 30Divorce granted, Alimony \$450
Custody of 3 children to Pltff & Deft

Nov 22

Pltff filed motion to modify Decree
and open up case, and requesting
to pay for support of children Rec S. p 575

Nov 30

Dec 3

Deft appeared to motion,
Deft ordered to pay Pltff \$20 per wk
Deft paid to October 1, 1887 and
paid all Alimony
Dora became 21 Aug 21, 1895. Gora on
Nov 12, 1898 & Pearl 1 Feb 10, 1908
Pltff supported Dora 9 yrs Gora 12 years
and Pearl 17 years from date of divorce.

NOTES OF AUTHORITIES.

Order of the court for payment of money to
support children may be enforced by attachment
Burns p. 1064 or by writ 2d App 452.
Power of court as to children is a continuing power 155-62
Suit must be pronounced within reasonable time 67
67 & 280; Right case not questioned Id.
Order that husband pay, unconditionally is a
judgement
In judgement not bar for till 20 years Burns 301
Statute does not run while defendant is a non
resident Burns See 298; 6 App 212;
In civil suits, 4 app for criminal conversation, cohabitation and
reputation, sufficient evidence of marriage, 41 Res 435

Circuit Court, DeKalb Co
 Bank of Vernon vs. Farmers Bank
 Bx to

Attorney for Pltff.

J. C. J. H. Rose

Attorney for Deft.

Nature of the Action.

Suit on ~~note~~ endorsement of note

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Model Gas Engine made its note
 for \$5000⁰⁰ pay able to Bank of Vernon
 and Albert Robbins President of
 defendant, wrote a letter to plaintiff
 guaranteeing payment.
 Is Farmers Bank liable?

President, if not specially authorized, cannot
 bind the Bank Boones Law of Banking 101
 3 Am. Leading decisions p. 1274
 Morse on Banking Sec. 142; 146-411 412
 85 Federal Decisions pt. 120 123

Court,

Kennedy vs. Garner et al

J E & J H. Rose

Attorney for Pltff.

Woodhull & Yeagley

Attorney for Deft.

Nature of the Action:

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Plaintiff's father died testate, giving her ~~8/100~~ ^{1/2} All other heirs, in consideration of her releasing a claim ^{she filed for services rendered her father agreed (proceeds) that she have an equal share with them. Deft. has a contract with tenants that expired March 1/05 more than one year after Deft.'s death. Heirs then made contract with tenants; crops raise in season of 1905. Land sold July 1/05 by executor - Do the crops belong to the heirs or to purchaser of the land? Until executor sells the land the heirs are entitled to the rents, 3rd Ind. 441, 54 Ind. 444, 57-42; 76-527; 65-329; 12 App. 245; 119-56 84-224; 29 Ohio Stat. 230; Rents accrued prior to death goes to ad. 20-386 no demand is necessary, 84-224 Death of life tenant terminates possession of all but right to enter for way going over 1 Ind. 264; 98-27. Admistrators, as such, not liable to heirs 24-202 Will may give power to sell, but not give interest in land 762-353. Way going crops belong to tenant of life tenant Taylor Land & Tenant 378 534 When the tenancy is uncertain, the tenant may reap the crops 8 Ind. 8 & Law 319 318 Top. Uncult grass belongs to heirs - 76-527, Hunt, 86 78 Rents of land accruing after death of testate belong to the heirs 29 Ohio Stat. 230 - In sale for commission in partition growing crops do not pass 1008. 125 Sheriff's sale does not cover growing crops 1208 8. In adm. sale growing crops are not appraised & sold. Death of life tenant terminates title and also possession of all but growing crops 1 Ind. 244; 98-2}

Superior Court, Allen Co.

Barnahan Jas. C vs. Bowers Henry Wal

J. E. J. W. Roe

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Foreclosure of Mechanics Lien

DATES
1901

HISTORY OF THE CASE

July 4 Work finished Amount due \$43.20
including \$12.80 due Wm. Fredrickson
Feb 24/05 Yedor & wife conveyed NW 1/4 of NE 1/4 - 3-32-13
Rec 182-744 to Henry Bowers & Ann Bowers for \$1500 -
May 1/05 Bowers & wife mortgaged land to Yedor & W
Rec 129-441 to secure \$1000 -
Plaintiff worked 159 hrs at .20 = 31.80
Fredrickson 86 hrs at 15 = 12.90
Sept 7/05 Notice of Lien filed
" 2 " Complaint filed & Ret. Sep 15
at 1 P.M.

NOTES OF AUTHORITIES.

Laborer may have lien Burns 180. See 7255
Laborers lien covers land and building. See 7256
Lien of Mechanic is superior to former. Mort 20 for a
The building goes. 150-684; Stat. Lien 114; 13 App. 522;
Compl. must be filed in one year: 15 App. 392,
and Junior Mortgage must be paid 152-104; 151-44
Building if sold must be removed ^{90 days} ~~in year~~. See 725.
Demand not necessary 19 App. 195;
What should notice contain. 19 App. 195; 137-688
18-176; 146-521; 19 App. 195.

Sale without relief See 7259

Attorneys fees included in Jud See 7267

Mechanic has prior lien to mortgage
on the building Burns See 7256. 150-684.
Where land is owned by H & W by either
a lien may be had. 22 App 271; 131-191; 87-490

Leicester Court, *Hobbs Co*
B & O RR vs. *Atwell & Co*

J. C. H. Cole Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

1905

HISTORY OF THE CASE

Aug 28 Complaint filed

Sept 9 Samuel Braden, Byron P. Gray
 and John Parker appointed
 appraisers.

NOTES OF AUTHORITIES.

Complaint to condemn right of way
 R.R. Co. may condemn. Acts 1905 p 59
 Burns sec 5158.
 May make 2nd condemnation E on RR Sec 1283.
 May appropriate beyond charter 9-469^{top}
 R.R. may make 2nd appropriation E on RR sec 930^{p 12}
 101-266^{p 12}
 If R.R. purchases right of way it may
 make changes E on RR 1285 bottom.
 Co takes title conveyed E on RR sec 938
 R.R. may condemn for what E on RR sec 938
 what may be condemned E on RR sec 963
 Description may be amended 99-593; 103-386
 125-509.
 Objections, only pleading allowed Sec 5 act 1905.

DeKalb Circuit Court,

Joshua Baker Jr. vs. B O R R

Sharpless & Smith

Attorney for Pltff.

J E & J H Rose

Attorney for Deft.

Nature of the Action.

Damages for Malicious Proc.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Plaintiff must show that the defendant had no probable cause
 148 Ind 581; 39 Blk 445; 2 Ind 148; 58-34
 Alderson Cir 2 p 66 & 68 a + b
 Defendant may rely on the statements of credible persons whom he did believe 43-81 Dalton a
 Defendant may rely on advice of an atty after giving all the facts 43-78 79 Bottom
 # Indiana trial evidence sec 67 Id 656
 Plaintiff must prove malice. Ind. Trial Co sec 655 to 149-131; 95-596; 43-132 Ind. J. 80-660
 Malice must be proven 149-131. Probable cause. In the court 149-131. Malice can not be inferred from want of prob. cause 149-131
 Acquittal of defendant not evidence of malice 149-131
 Defendant may testify that he did not act through malice. Ind. Trial Co sec 655; 104-36
 The burden is on plaintiff. Ind. J. 60 sec 652

Noble Circuit Court,

Kunkleman vs. B D

H. G. Zimmermann Attorney for Pltff.

Ror & Ror Attorney for Deft.

Petition for ^{Nature of the Action.} ~~Pltff~~ Ditch

26 feet 12 in below top of rail

DATES

HISTORY OF THE CASE

1903
 Nov 2 Petition filed
 Jan 12/04 Docketed
 Jan. J. W. Moorhouse, John A. Jennings
 and Chas W Becker Commissions
 Ordered to report Oct 1804
 Continued from time to Oct 20/05

NOTES OF AUTHORITIES.

Petition for Drain in Noble to
 Remonstrance must be filed in
 ten days Burns sec 5625,
 Amendment adds 1903 p 377
 A remonstrance filed within the 10 days
 must be received. 101-78

Rail Road crossing stream Stat Sec. 5753-
 Rail Road Co, entitled to pay for changes
 in bridge required by ditch and for
 removing bridge for dredge 143-347³⁵²

Statute forbids construction Ach/05 p 480

In June April 16/05
 Fresh water lake cannot be drained
 lots 7/05 p 447 In June March 6/05
 Rail Road cannot recover damages
 for injury to bridge by ditch 61 Federal 885
 RR entitled to damages for highway xing 24 Dns 275

Duty to restore highway is a continuing one and applies to highway established after
 construction of rail road. 149 Dns 277; 6 Dns 352, 159 Dns 510, 191 Dns 119

19

No. 4827

Court,

Lanlar

vs.

B. O.

Frank O. Battwell

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Sept 5/05 Petition filed

Set for 2nd day of Jan. Term 06
Ditch does not x rail road

NOTES OF AUTHORITIES

Petition by Chas J. Lanier for
ditch in Sparta, Mo.

20

No. 4841

Court,

Jas Buckles
Petersson

vs.

B. O.

Attorney for Pltf.

Rose Rose

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Sep 22/05 Complaint filed
Oct 3/05 Demurrer to complaint

NOTES OF AUTHORITIES.

Court,

B. C. & R. Co vs. Interurban

J. E. of N. R. Co

Attorney for Pltf.

+ L. Welsheim

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

crossing must be paid under the
law of 1901. see act of 1901 p. 462 et seq.
see act of 1903 p. 125.

22

No. 6967

Circuit Court, Det. Cal. Co.

McKinnley vs. R. R. Co.

H. W. Morant

Attorney for Pltff.

Rose & Rose & Co.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Aug 1/03 Complaint filed
 Sept. 30/02 Decedent was killed
 Illinois statute required action in 2 yrs
 May 13/03 Statute amended to one year

NOTES OF AUTHORITIES.

It is within the discretion of the court to allow
 amendments to pleadings after issue joined
 182-327; 28 App 174; 116-193; 111-494; 107-544; 164-27

23

No. 7557

Circuit Court, DeKalb
 Remmer vs. Chapman
 J. E. & J. H. Rose Attorney for Plff.
 Morris & McNagney Attorney for Deft.

Nature of the Action.

Damages for Assault & Battery

NOTES OF AUTHORITIES.

Complaint for damages from A & B
 Defendant may be required to testify, Dec 1869
 Defendant cannot prove former assaults, L. & A. B.
 (Shoemaker vs. Jackson L. & A. B.)

DATES

HISTORY OF THE CASE

Oct 31/05 Assault Committed
 Nov 10/05 Complaint filed
 Nov 11/05 Summons & notice served

Court,

Brady vs. Wm. Stinich

J. P. - J. N. Rori

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Parties and a brother who has been
absent and unheard of for 6 years
owned land by inheritance

Brother presumed dead

See Burns Stat sec 2385 & 2386

Facts which may be considered 19 Feb. R p 68

Admr. should settle debt C. C. and 376

Death presumed from absence 22 & 6 p 124

where the recovery of land is a question ad.

also 109 - 567

Letters sent to absent 22 & 6 p 1252

Court,

Luisinger

vs.

J. Gratz
Jones

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Feb 10/02 Left land sold for Taxes \$97.77
 Dec 13/02 Pltff paid Taxes \$22.54

NOTES OF AUTHORITIES.

Plaintiff done general work in Treasurers office
 spent his name to receipts, received money
 and did all things that he could do.
 Personal must first be paid, 25-134; 57-279.
 81-208; 94-572; 102-385.

Auditor shall make duplicate see 8561 Burns, and
 shall deliver it to Treasurer see 8566.
 Treasurer shall make delinquent list see 8571
 Auditor shall certify to list. 2d. Treasurer
 shall make a delinquent 2d. and after a
 delinquent search, finding none, shall make a
 return. Auditor may not credit Treas.
 with delinquent taxes, without oath see 8572.
 If Treasurer fails to make delinquent
 list, he is liable on his bond 8572.
 Treasurer may levy at any time 8575.
 Auditor shall make delinquent list, and
 deliver to Treas. and post at Court H. 8601
 manner of sale see, 8603; Quasauty, & sub 8609
 Lien of state transferred when see 8632. When sale
 is invalid 8631; Proof of title 8639.

Suits to quiet title see 2640.
 Purchaser has lien, although bond owner had per-
 sonal property subject to sale of taxes. 81-180, 110-711.
 Mortgage cannot enjoin sale although
 tax has been paid 89-2368

Circuit Court, DeKalb

Roider vs. Sheeb

6 E Emanuel
J C J. H. Ore

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

To Quiet Title

DATES

HISTORY OF THE CASE

Complaint to Quiet Title

NOTES OF AUTHORITIES.

Defendant's procured a judgment against the plaintiff in Dec. 30, 1899, in DeKalb Circuit Court for \$1200. See Rec 34 p 305, on a complaint charging embezzlement. Court found the facts specially. Plaintiff filed petition in bankruptcy, and was discharged - she included the debt in her schedule. A debt created by embezzlement while acting in a fiduciary capacity is not released. Federal Statutes Vol 1 h 577. Judgment need not show that it was obtained. The term "fiduciary" refers to any person who is not the form of the judgment only. - Bankruptcy on Picking Sec 482, Id 435. A case defining fraud and embezzlement 95 N.S. 580, defendant may set up facts, although records are lost 18 N.E. p 249. A discharge does not extinguish the debt, it simply takes away the creditors right of action. 2 N.E. 2d 601 16 p 771. As a petitioner in bankruptcy, shorn no property - only such as will be exempt by the laws of the state, and no debt by law as and not payable. The petition should be dismissed. 100 Federal Reporter 919. Property held in trust, evidenced by a written or express trust is not released by bankruptcy of defendant. Ellison vs Gardner 167 and 471.

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No. _____

Court,

Reed

vs.

Draggoo

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

The Auditor or assessor cannot increase the valuation of property assessed by the owner. 106 - 348

4 App 374; 73 N.E. 1092. Injunction will not lie against placing on duplicate, 2d

County may hire ferret 155-345, 31 Apr. 13
 Administrative Code 141-382; 138-434.
 County Assessor may assess omitted property. Burn.
 rec 8581

Circuit Court, DeKalb Co
 Ella Thomas vs. Alfred Thomas et al
 J E & J H. Rose Attorney for Pltff.
 Willis Rhodes et al Attorney for Deft.

Nature of the Action.

To Quiet Title

DATES	HISTORY OF THE CASE
May 17/92	Complaint filed 3 Paragraphs
" " "	Lis Pendens notice filed
" " "	Off of non res filed
Dec 17/02	Ans. of McLaren filed
Dec 16/02	Ans. of Yocum filed
March 3/03	Amended Answer of Yocum filed
Oct 1/02	2 nd Amended Answer of Yocum filed
Dec 17/02	Maggie Bowers files Answer
Dec 17/02	Cross Petition of Yocum filed
Aug 6/02	Ans & Cross Compl of Thomas filed
Feb 1/06	Supplemental Complaint filed
March 5/06	Amended Supplemental Compl filed
" 20 "	2 nd Par of amended Suppl Compl filed

NOTES OF AUTHORITIES.

Complaint to Quiet Title - alleging that Alfred J. Thomas, sold land described to the plaintiff, and refuses to make a deed. The complaint therefore shows kind of title 106-296; If an equitable title is claimed, all the facts should be set forth 2d. A complaint showing that plaintiff is the owner by a complete equitable title is good 130-469
 A judgment in such an action covers all that might have been liquidated in the action. 71 L. 336 but does not operate on an after acquired title - 47-450; 125-185
 A transfer of interest will not render incompetent witnesses competent 32 L. 23
 Heirs who are parties are not compelled Sec 50; Assignor not competent - REC 510
 For deed is prima facie proof Burns 190; see 8624
 Plaintiff need not show want of per. prop 145-49
 The signature may determine what evidence shall be prima facie 147-80
 See Doran vs Lupton 154-398; Wilson vs Barico 155-578; Brown vs Rees 31 Apr 520; 34 Apr 217
 When deed is introduced the burden is on the defendant, May v Dobbin 77 N.E 353

Court, _____

B & O

vs.

Leighty

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

May 24/75 Deed from Leighty, con. election &
maintenance of Depo 1, 2 & 3/8

NOTES OF AUTHORITIES.

A Rail Road Co. having taken a deed
for land to build a depot on, in
consideration of the location and maintain-
ance of depot, has complied with the term
by maintaining it 30 years 89-375

Court,

Popales

vs.

Gall

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

m.

M. Craig willed $\frac{1}{4}$ of his estate to his four children for life, and at the death of each, property to go to the children of deceased, and if deceased had no children then property to go to nephews & nieces of decedent.

Testator died leaving all his children surviving, and each had children

NOTES OF AUTHORITIES.

A future and prospective interest in land not subject to conveyance

127-31; 125-139; 133-507,

The grand children of testator, having a life estate given them, after their parents death, have a vested estate in the land 101-172; 101-180; 113-323

The provision in the will, for the disposition of the property of a child, who dies childless, is inoperative, for the reason that all had children, and were living at time of testator's death, 152-362

1st Circuit Court,

Strebe vs. Zeiser

J E of H Rone

Attorney for Pltff.

Le H Wrigley

Attorney for Deft.

Nature of the Action.

Petitions for change of Highway

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Remembrance for damages
Measure of damages is difference in value of farm before & after taking 22-101, 130-27
Use of land considered 139-262;
Benefits may be considered 84-496; 130-295;
134-262; 143-144; 159-8; 29 App 579;
Witness may testify as to convenience of land owner 130-288; If petitioner pay it must be before order is made 155-502;
No one but person entitled to damages can maintain action relating thereto 4-485;
Burden on remonstrator 89-252;
Petition may state that he will make one hereof crossing 152-249;
Witness may not give opinion as to damages 148-488;
Petition may be amended, and the amendment may be made by attorney 28 App 174;
Leave to amend by adding owners names may be granted 55-78;
Leave may be given by circuit court to change location 101-657; 134-485; 143-247;
Remonstrator can not raise objection to the petition after the remonstrator 34-337;
Reviewers may consider benefits resulting to the land by the improvements 29 App 584;
Jury may exercise their judgment where the evidence conflicts 29 App 585 2^d clause
One petitioner may include location and location 72 App 1102;
Pet. and proof need not show that the whole people want the road 74 App.

Circuit Court, DeKalb Co
Trust Co vs. G. Walker & A

Brown & Wier-

Attorney for Pltff.

J. C. & A. C. & A.

Attorney for Deft.

Nature of the Action.

To declare Vendors Lien

DATES,

HISTORY OF THE CASE

Oct 24/66 Complaint filed.
Dec 20/66 Return filed to comply

NOTES OF AUTHORITIES.

Subrogation recognized 111-509
Lien cannot be created by agreement
95-225; 124-545; 144-488; 154-393; 41-24
Money loaned to pay purchase price is
is not purchase money 13 Ohio 157; Latham
& Co. & Law vol 29 p 749;
Conveyance made to pay past debt
good but a mortgage
made to secure past indebtedness, does
not divest record lien

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No. _____

Circuit Court, DeKalb Co
 Jackman vs. Myers et al

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

Suit on Replevin Bond

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Replevin bond given to Sheriff may
 be sued by party 35-360; 16-374

A trial of the facts in original case is
 conclusive against bondsmen, 23-500
 24-248; 37-465; 37-465; 49-309; 110-1
 The value of the property is the measure of
 damages 16-374;

Circuit Court, Noble Co

W. H. Houston vs. B. O. R. Co

L. H. Wrigley

Attorney for Pltff.

J. S. J. W. L. Co

Attorney for Deft.

Nature of the Action.

Damages for delay in shipping freight

NOTES OF AUTHORITIES.

Complaint charges damages for a negligent delay in shipping stock.
See 8th & 1905 1/2 59 Burns Wal 9/2 32976
The contract should be pleaded as a defense.
See 1905 Supplement 5405 L. Burns D.

DATES

HISTORY OF THE CASE

Complaint filed Feb 7/06



Circuit Court, DeKalb Co
 Plaintiff, *Carroll* vs. *Chas. J. Timm* &
Daniel H. Link Attorney for Pltff.
J & J W Kore Attorney for Deft.

Nature of the Action.

Action for Partition

DATES

1907

HISTORY OF THE CASE

Plaintiff, ones for partition and
 alleges that defendant has no
 interest in the land.

and that, if living, would con-
 firm and she lived with John
 Sabre as his wife and died.

and went against Sabre in favor
 of his former wife, who died, and
 defendant became her owner. is
 sought by cross complaint to bring
 to complaint filed

cross complaint filed

Aff of non res. of deft filed & pub. ordered

July 14-
 " "

NOTES OF AUTHORITIES.

Marriage may be proven by reputation
 and cohabitation Int. Trial evidence sec 447
 & Behf 234; 2nd Ind 76; 82 Ind. 519; 101 Ind 129
 Marriage proven by cohabitation and reputation
 by presumption, proves dissolution of former marriage
 119 Ind 577; Schenkels Domestic Relations
 25; 2nd Kent 67; 96 Ind. 76; Bishop's mod 22;
 2nd Greenleaf 462; 120 Ind 251;

Circuit Court, DeKalb Co
 Georgia Points vs. John Shilling
 J. B. J. H. Roe

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Collection of Barland's Judgement

DATES

1896

HISTORY OF THE CASE

April 23 Complaint filed before Lewis Berry
 Warrant issued and ~~returned~~ returned
 debt not found, trial and finding that
 debt is father & child. Transcript filed
 in circuit court. Warrant issued
 May 7/97, and defendant arrested. Sol
 Shilling ~~for~~ Bail
 Jan 6, 1898 verdict returned and
 judgement rendered for \$800. J.B. 215
 O.B. 31-576. Aug 5 '07 execution issued
 Defendant remained in jail one year.
 He is now married and resides in DeKalb County.
 Was willed 1/2 of 24 acres of land by his mother.
 Defendant went through Bankruptcy since
 Jud. was rendered

No exemption, nor appraisement on such a
 judgement.
 A release in Bankruptcy does not discharge from
 a judgement in Bankruptcy. In Re Hubbard
 98 Fed. Rept. 710; In Re Baker 96 Fed. Rept. 954
 In Re Mahles 105 Fed. Rept. 919; Branderburg on Bank-
 ruptcy sec 437



Court, _____

Grace

vs.

B. B. O. R. O. R.

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

Petition for public use

DATES

HISTORY OF THE CASE

Grace filed petition for a drain
in channel of old drain - which
was constructed under road bed - after
first ditch was built R. O. R. was built
and an iron pipe put in - afterwards the
road bed was widened to 120 feet
Ditch Commissioner requires Geo.
to construct ditch across right of way

NOTES OF AUTHORITIES.

Geo may build road across stream
St 1881-3903-5 - This section covers roads
and Appellate court holds that Geo must
widen stream road & App. 390; 149-278
18 App 267

Wiscuit Court, *De Kalb Co*
Casebeer Matheny vs. *Hiram Moore*
Hartman & Borst Attorney for Pltff.
J E of H. Cox Attorney for Deft.

Nature of the Action.

*Suit on account for services
 in setting broken leg.*

DATES

HISTORY OF THE CASE

*Complaint filed
 Answer in G.D. filed*

NOTES OF AUTHORITIES.

*Plaintiffs sue on account for setting
 broken leg. Defendant pleads, negligence
 on part of plaintiffs.*

*Statute of limitations is 6 years 46-109
 For forming counter claim 46-159, 103-4*

*Statute does not run against 89-4
 2 500. 14-809; 6 Blkf 268; 72-280; 5 App 183
 Statute to bar Counterclaim must have
 run, when suit was commenced. 91-457, 46
 + counter claim may have been cause
 for separate suit 10 App-133;*

*Where one of two surgeons sued for malprac-
 dice, the suit abates 103-468; -4 amply decided of one
 partner, not a proper party. 103-468 477. Likewise
 of one partner not admissible against the other
 103-468 477 but is admissible while the
 treatment is going on 103-368 478 top.*

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No. _____

Circuit Court, DeKalb

Myrtle Komerly vs. Eunice Fejler

Hoffman & Moody Attorney for Pltff.

J E of N R R Attorney for Deft.

Nature of the Action.

NOTES OF AUTHORITIES.

Life Tenant my lease for her life 146-399
 Plaintiff may recover during coexistence 37-463

DATES

HISTORY OF THE CASE

Jan 12/89 Eunice Fejler & hus, conveyed to Plaintiff
 S 1/2 NW 1/4 & NW 1/4 SW 1/4 3-33-14 for \$3000. then
 assessed for taxation \$2625. 3 1/2 246
 Jan 22/94 Myrtle Komerly (Komerly) & hus conveyed to
 Defendant, SW 1/4 13, 33, 12 except 60 acres off
 N.E. side & 7 1/2²⁵ out of N.E. corner of S 1/4 14, 33, 12
 for \$4200 - 3 1/2 246 assessed at \$2780. she
 received \$500. cash to "boot".

Mar 26/90 Plaintiff sold to Krabill NW 1/4 of SW 1/4 3-33-14 \$400 -

May 27/90 3 1/2 438, she sold to Krabill S 1/2 of NW 1/4 3-33-14
 for \$1500 - 3 1/2 243

Mar 1/07 Com. Court filed



Circuit

Court,

De Kalb Co

James P. West

vs.

Henry H. H.

J. B. J. A. Rose

Attorney for Pltf.

J. O. Pomeroy

Attorney for Deft.

Nature of the Action.

Divorce

DATES

HISTORY OF THE CASE

Complaint filed

NOTES OF AUTHORITIES.

Condonation must be pleaded
 Breedlove vs Breedlove 27 App. 560^{2d}
 Condonation, implies a promise
 to treat the plaintiff in all respects
 with conjugal kindness. 34 Ind. 367
 Rose vs Rose 87 Ind 481;
 Condonation is based on repentance
 and if subsequent acts show no
 fruit of repentance, the condonation
 is removed. Armstrong vs Armstrong 27-187

Circuit Court, DeKalb Co
State vs. Sherwood

C. S. Smith

Attorney for Pltf.

J. O. & J. H. Koss

Attorney for Deft.

Nature of the Action.

Indictment for obstructing flow of water

DATES

HISTORY OF THE CASE

Defendants wife owns a farm on north side of highway, a public drain comes from the south and passes through a tile 12 in. The tile is four or five feet below the surface of the highway. In time of high water the tile does not carry all the water, and it runs over the road, in 3 places and floods the land of deft. He erected a dam at the south line of his land to prevent overflow of surface water.

June 5/08 Indictment returned, alleging act was done May 23/08

NOTES OF AUTHORITIES.

Owner of land may build a dam to keep surface water off of his land

64-167; 67-201; 78-278; 77-302; 99-205;

9 App 56; 12 App. 372;

See 67-209 middle for an instruction.

The dam not a nuisance 77-305 bottom

Indictment does not allege obstruction, but it must do so 58-417. The language of the indictment must be considered.

Indictment must show some substantial interference with travel 58-417. Defendant owned the land to the center of the highway 21-44. Deft may use the land, but not to impede travel on the road as Elliott of page 310 et seq. 16-340 middle. The owner of land over which a highway is located may make any use of it he pleases, not to interfere with travel - 15 Am & Eng Digest of Law 416

One who places an obstruction in the highway that interferes with travel is guilty - 5 Am & Eng 508

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No. 169

NOTES OF AUTHORITIES.

U. S. Court - Court,

James H. Wadley vs. 10 & C. R. K. C.

Shiley Green & Kites

Attorney for Pltff.

Miller, Shiley & Miller

Attorney for Deft.

Nature of the Action.

Damages

DATES

HISTORY OF THE CASE

Sept 17-07	Complaint filed	
" " 8	Bond for costs filed S. Beris & Fred. L. C. & Co. sureties -	
June 9, 08	Case dismissed at plaintiff's cost	
	Plaintiff's costs paid	18.30
	" " unpaid	33.30
	Def't costs unpaid	102.51

Grover Drains
Rail road may x stream 1881-3905-5



